

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (For Court Use Only)
PLAINTIFFS HARVEY WALTER DIZOL KATHERINE O'REILLY DIZOL 4044 FIZER ROAD Springfield, TN 37172		DEFENDANTS Christiana Trust, A Division of Wilmington Savings Fund Society FSB, as Trustee for Stanwich Mortgage Loan Trust, Series 2012-13
ATTORNEYS (Firm Name, Address, and Telephone No.) Steven R. Wilmoth 025759 The Fleming Law Firm 409 North Locust Street Springfield, TN 37172 (615) 384-7750 Fax: (615) 384-4871		ATTORNEYS (If Known)
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) To void the lien of Christiana Trust, A Division of Wilmington Savings Fund Society FSB, as Trustee for Stanwich Mortgage Loan Trust, Series 2012-13		
NATURE OF SUIT		
(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) - Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other		
FRBP 7001(6) - Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other		
FRBP 7001(2) - Validity, Priority or Extent of Lien <input checked="" type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property		
FRBP 7001(7) - Injunctive Relief <input type="checkbox"/> 71-Injunctive relief - imposition of stay <input type="checkbox"/> 72-Injunctive relief - other		
FRBP 7001(3) - Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)		
FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest		
FRBP 7001(4) - Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)		
FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment		
FRBP 7001(5) - Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation		
FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause		
FRBP 7001(6) - Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny		
Other <input type="checkbox"/> SS-SIPA Case - 15 U.S.C. §§78aaa et.seq. <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)		
(continued next column)		
<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$
Other Relief Sought		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR HARVEY WALTER DIZOL KATHERINE O'REILLY DIZOL		BANKRUPTCY CASE NO. 3:12-bk-08047
DISTRICT IN WHICH CASE IS PENDING Middle District of Tennessee	DIVISION OFFICE	NAME OF JUDGE
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
<u>/s/ Steven R. Wilmoth</u> <u>Steven R. Wilmoth 025759</u>		
DATE May 6, 2014	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Steven R. Wilmoth 025759	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE

In the Matter of:) BK Case No. 3:12-bk-08047
HARVEY WALTER DIZOL and)
KATHERINE O'REILLY DIZOL)
4044 FIZER ROAD) Chapter 13
SPRINGFIELD, TN 37172) Adversary Case #: 14-ap-900 _____
)
Debtors and Plaintiffs.)
)
v.)
)
CHRISTINIA TRUST, A DIVISION)
OF WILMINGTON SAVINGS FUND)
SOCIETY, FSB, AS TRUSTEE FOR)
STANWICH MORTGAGE LOAN)
TRUST, SERIES 2012-13)
Defendant.)

**COMPLAINT TO VOID THE LIEN OF CHRISTIANA TRUST, A DIVISION OF
WILMINGTON SAVINGS FUND FSB, AS TRUSTEE FOR STANWICH MORTGAGE
LOAN TRUST, SERIES 2012-13**

JURISDICTION AND VENUE

- 1) This Court had jurisdiction pursuant to 28 U.S.C. §§151, 157(b) and may issue any order, process or judgment necessary to carry out the provisions of Title 11 of the United States Code pursuant to 11 U.S.C. §105(a).
- 2) Venue is proper pursuant to 28 U.S.C. §§1408 and 1409(a).
- 3) This Court has jurisdiction and may hear and issue relief and orders for all state law claims pursuant to 28 U.S.C. §1367.
- 4) This case relates to the bankruptcy case of In Re: Harvey Walter Dizol and Katherine O'Reilly Dizol, Case No. 3:12-bk-08047, filed under Chapter 13 of Title 11, United States Code, in the United States Bankruptcy Court for the Middle District of Tennessee, on August 31, 2012.
- 5) This is a core proceeding.

DEBTORS' AND PLAINTIFFS' CAUSE OF ACTION

- 1) The Debtors scheduled a secured obligation to Suntrust Mortgage for a debt which the Debtors believed was secured by a first Deed of Trust on the Debtors' home located at 4044 Fizer Road, Springfield, TN 37172.
- 2) At some point prior to the filing of the bankruptcy and unbeknownst to the Debtors, Suntrust Mortgage apparently attempted to assign the note and deed of trust to Christiana Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for Stanwich Mortgage Loan Trust, Series 2012-13 ("Christiana"). Carrington Mortgage Services is purported to be the new servicer of the account and the entity to which payment should be made.
- 3) John A. Medina, attorney for the creditor, filed a proof of claim on behalf of Christiana on January 25, 2013, however the bar date for non-governmental claims was January 14, 2013. Mr. Medina withdrew this claim on April 15, 2013.
- 4) Pursuant to Rule 3004 Debtors' attorney filed a claim on behalf of Christiana on February 12, 2013 for \$267,695.75 (ECF Claim #11)
- 5) The claim filed on behalf of Christiana has been disallowed upon motion of the Chapter 13 Trustee because the name of the creditor on the proof of claim is not supported by the documents attached to said proof of claim.
- 6) Debtors' counsel has made an effort to attempt to get Christiana, through their counsel, to comply with requirements for overcoming the Trustee's objection, without success.
- 7) Pursuant to 11 U.S.C. §506(d), the lien of Christiana is not an allowed secured claim and therefore such lien is void.

WHEREFORE, PREMISES CONSIDERED, Debtors and Plaintiffs pray:

- 1) That the Court will void the lien of Christiana Trust, A Division of Wilmington Savings Fund Society, FSB, as Trustee for Stanwich Mortgage Loan Trust, Series 2012-13 (payee Carrington Mortgage Services).

Respectfully submitted,

/s/ Steven R. Wilmoth
Steven R. Wilmoth

Attorney for Debtor
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CERTIFICATE OF SERVICE

I hereby certify that on 05/06/2014, a true and exact copy of the foregoing complaint was mailed or delivered via ECF to: Henry Hildebrand III, Standing Chapter 13 Trustee, PO Box 340019, Nashville, TN 37203; to the office of the US Trustee, 701 Broadway, Ste. 318, Nashville, TN 37203; to the Debtor at the above referenced address; the complaint was mailed via USPS certified mail, return receipt requested to Christiana Trust, ATTN: Scott A. Armiger, Vice President, 3801 Kennett Pike, Ste. C-200, Greenville, DE 19807, Wilmington Savings Fund Society FSB, ATTN: Mark A. Turner, President & CEO, 500 Delaware Ave., Wilmington, DE 19801, John A. Medina, 3675 Crestwood Parkway, Ste. 300, Duluth, GA 30096, Carrington Mortgage Services, ATTN: Bruce Rose, CEO, 1610 East St. Andrew Place, Ste. B150, Santa Ana, CA 92705, and Carrington Mortgage Services c/o C T Corporation, 800 South Gay Street, Ste. 2021, Knoxville, TN 37929.

/s/ Steven R. Wilmoth
Steven R. Wilmoth